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HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri H.L. Dattu, C.J.

Writ Petition No. 2456 of 2000

Petitioner

Mahanadi Education Society,
A Society registered under the provisions of Societies Registrikaran Adhiniyam, 1973, having its Office at Ravi Bhawan, Through Secretary, Shailendra Jain, S/o Shri S.C. Jain, aged about 32 years, R/o Central Avenue, Choubey Colony, Raipur (MP)

versus

Respondents

1. State of Madhya Pradesh,
   Through Secretary, School Education Department, Vallabh Bhawan, Bhopal
2. Director,
   Public Instructions,
   Directorate of Public Instructions,
   Madhya Pradesh, Bhopal
3. Commissioner,
   Raipur Division,
   Raipur (M.P.)
4. Sub-divisional Officer
   (Competent Authority) appointed
   U/s. 3 of the M.P. Lok Parisar
   Bedakhli Adhiniyam, Raipur,
   Dist. Raipur (M.P.)
5. Tehsildar,
   Raipur (M.P.)

Writ Petition under Articles 226/227 of the Constitution of India.

Present : Shri B.P. Sharma, counsel for the petitioner.
Shri Prashant Mishra, Addl. Adv. Gen. for the State.

ORAL ORDER

(Passed on 3rd May, 2007)

Petitioner is a Society registered under the provisions of Societies Registration Act, 1973 ('the Act' for short). Petitioner/Society is managing and running an Engineering College in the name and style of "Raipur Institute of Technology". The Petitioner/Society in this writ petition filed under Articles 226/227 of the Constitution of India calls in question the correctness or otherwise of the orders passed by the Competent Authority and the First

Appellate Authority under the provisions of Chhattisgarh Lok Parisar (Bedakhli) Adhiniyam, 1974 (for short "the Adhiniyam") dated 14-02-1998 and 08-03-2000 respectively.

(2) The facts in nutshell are that the petitioner/Society had requested the Principal of the Government Multipurpose Higher Secondary School, Raipur to accommodate the Society to start an Engineering College by the Society for the year 1995. The Principal of the school had recommended the case of the Society to the Municipal Corporation, Raipur. In his recommendations he has stated that he has no objection whatsoever for giving the portion of the building belonging to the school, to the Society for its temporary use since the building is in dilapidated condition.

(3) It appears that on the recommendations made by the Principal of the School, the Municipal Corporation has issued order dated 04-08-1995 (Annexure P/2) to the Society. The resolution/order would contain certain clauses which are relevant for the purpose of deciding this case, therefore they are noticed, which reads as under:-

> "The Mahanadi Education Society has submitted an application for using Commerce annexe building of Government Multipurpose Higher Secondary School, Raipur for the purpose of starting an Engineering College by the Society in this year. The Principal has recommended and has No objection for giving that building to the Society for temporary use as this building is not in use and is in delipidated condition. As the Principal is willing to temporarily part away with this building, the Municipal Corporation has not no objection if the Principal hands over the building for temporary purpose to the Society Provided.
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> 01. That the Society would use the building premises, for a limited period of time.
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> 02. The Society gives an undertaking to renovate the building with their own resources for which Government/Municipal Corporation will not compensate.

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03. That the Society will pay for the maintenance, electric charge or any other taxes imposed by the local authorities until the building is in possession of the Society.

04. That the Society will pay rent to the Government/Municipal Corporation as decided.

05. That the Society will give preference to the students of Chhattisgarh region of Madhya Pradesh."

(4) The resolution/order of the Corporation was even transmitted to the Collector, Raipur who in turn had directed the Rent Controlling Authority to fix the rentals for the building which is being allowed to be occupied by the petitioner/Society. Pursuant to the directions so issued the Rent Controlling Authority had fixed the rentals of the building at Rs.18,275/- by its order dated 28-09-1996. It appears that the Society continued to pay the rentals for a period of three years from the date of the order passed by the Rent Controlling Authority.

(5) The Competent Authority under the provisions of Adhiniyam, being of the view that the occupation of the building by the petitioner/Society is an unauthorized occupation, has issued a notice dated 21-08-1998. In the notice he has directed the petitioner/Society to quit and deliver the vacant possession of the premises in their occupation. Since the petitioner/Society did not vacate the premises, the Competent Authority had issued yet another notice dated 14-06-1999.

(6) After receipt of the notice dated 21-08-1998 and 14-06-1999, the petitioner/Society had filed reply to the same and in that apart from other things has specifically contended that the Authority has no jurisdiction to initiate any proceedings under the provisions of Adhiniyam. The Authority under the Act after considering the objection so filed by the petitioner/Society had passed an order dated 14-02-1998 directing the petitioner/Society to quit and deliver the vacant possession of the premises to its occupant.

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(7) Aggrieved by the aforesaid order the petitioner/Society had a filed an appeal before the Appellate Authority as provided under the Adhiniyam. The Appellate Authority had rejected the appeal by its order dated 08-03-2000. Aggrieved by these two orders the petitioner/Society is before this Court in the petition filed under Articles 226/227 of the Constitution of India.

(8) Shri B.P. Sharma, learned counsel appearing for the petitioner/Society vehemently contended before this Court that the petitioner/Society is not an unauthorized occupant as defined under Section 2(g) of the Adhiniyam, and therefore, the respondents had no jurisdiction or the Authority to initiate any proceeding against the petitioner/Society. In support of his contention learned counsel have taken me through Annexures P/1 and P/2 filed along with the writ petition. Therefore, he submits that initiation of the proceedings itself by the respondents is bad in law.

(9) Learned Additional Advocate General Shri Prashant Mishra sought to justify the impugned order passed by the respondents/Authorities.

(10) In order to appreciate the contention canvassed by learned counsel for the parties to the lis, certain provisions of the Adhiniyam require to be noticed. The Adhiniyam provides for the eviction of unauthorized occupants from public premises and for certain incidental matters. In the dictionary clause, the expressions like Competent Authority, public premises, unauthorized occupation are defined. Section 2(a) of the Adhiniyam speaks of the Competent Authority - it means an authority appointed as such by the State Government under Section 3 of the Adhiniyam. Section 2(e) of the Adhiniyam speaks of public premises – it means any premises belonging to or taken on lease or requisitioned by or on behalf of, the State Government, and includes any premises belonging to, or taken on lease by, or on behalf of -

(i) any company as defined in section3, of the Companies Act, 1956 (No.1 of 1956), in which not less than fifty one per cent of the paid up share capital is held by the State Government; and

(ii) any Corporation not being a company as defined in section of the Companies Act, 1956 (No.1 of 1956) established by or under a Central or State Act and owned or controlled by the State Government or a local Authority.

Section 2(g) of the Adhiniyam speaks of unauthorized occupation in relation to any public premises-it means the occupation by any person of the public premises without authority for such occupation and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises as expired or has been determined for any reason whatsoever.

Section 3 of the Adhiniyam speaks of appointment of Competent Authority. Section 4 of the Adhiniyam speaks of issuance of notice to show cause against order of eviction. The said provision is relevant for the purpose of deciding some of the issues raised by the parties. Therefore, the said provision is extracted below:-

> "**4. Issue of notice to show cause against order of eviction** – (1) If the competent authority is of the opinion that any persons are in un-authorized occupation of any public premises and that they should be evicted, the competent authority shall issue a notice in writing calling upon all person concerned to show cause on the specified date why an order of eviction should not be made.
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> (2) The notice issued under sub-section (1) shall,-
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> (a) specify the grounds on which the order of eviction is proposed to be made; and
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> (b) require all persons concerned, that is to say, all persons who are, or may be, in occupation of, or claim interest in, the public premises,-

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(i) to show cause, if any, against the proposed order on or before such date as is specified in the notice, being a date not earlier then ten days from the date of issue thereof; and

(ii) to produce on the date specified all evidence in support of the cause to be shown.

(3) The competent authority shall cause the notice to be served by having it affixed on the outer door or some other conspicuous part of the public premises, and it shall also be published in such other manner as may be prescribed, whereupon the notice shall be deemed to have been duly served on all persons concerned.

(4) Where the competent authority know or has reasons to believe that any persons are in occupation of the public premises then, without prejudice to the provisions of sub-section (3), it shall cause a copy, of the notice to be served on every such person by post or by delivering or tendering it to that person or in such other manner as may be prescribed."

(11) The other provisions of the Adhiniyam need not be noticed by me as they are not necessary for the disposal of this writ petition.

(12) The first question that requires to be decided is whether the occupation of the petitioner can be termed as unauthorized occupation? Secondly, whether the show cause notice issued by the respondents/Authorities is as contemplated under Section 4 of the Act?

(13) It is the case of the petitioner before this Court that the State Government by its order dated 05-01-1995 had conferred the rights to manage the affairs of the school to the urban body. In the said order it is stated that all the schools in urban areas shall be under controlled of concern urban body and it is the responsibility of the urban body to manage affairs of the school.

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(14) The petitioner/Society which was in need of the accommodation to start an Engineering College had requested the Principal of the Government Multi-purpose Higher Secondary School, Raipur to part with a dilapidated building belonging to the school to run its Engineering College. The Principal of the school after considering the request of the petitioner/Society had recommended the case of the petitioner/Society to the urban body namely the Municipal Corporation, Raipur to lease out or permit the petitioner/Society to use the dilapidated building belonging to the school subject to certain conditions. The Municipal Corporation after accepting the recommendations made by the Principal of the school has authorized the petitioner/Society to make use of the building premises for a limited period of time and has also stated that the Society shall pay rentals to the Government/Municipal Corporation as decided.

(15) After passing of the resolution/order by the Municipal Corporation, the Collector of the district who is Competent Authority and who represents the State Government in the district had directed the Rent Controlling Authority to fix the rentals payable to the user of the dilapidated building. Pursuant to the directions so issued by the Collector, the Rent Controlling Authority had fixed the rentals at Rs. 18,275/- per month payable by the Society to the State Government. I am informed by the learned counsel for the petitioner/Society that the Society continues to pay the rentals for a period of three years till the eviction proceedings were initiated against the petitioner/Society.

(16) The recommendations made by the Principal of the school are accepted by the Municipal Corporation, Raipur. The Municipal Corporation had the Authority to accept his recommendation for the reason that the State Government in its order dated 05-01-1995 had conferred the rights on the urban body to manage the affairs of the school. The Municipal Corporation after accepting the recommendations made by the Principal of the school had permitted the Society to run the school in a dilapidated building belonging to

the school. The action taken by the Principal of the school and by the Municipal Corporation was in the knowledge of the Collector of the district. In fact, the Collector who is representative of the State Government in the district has accepted even the rentals paid by the petitioner/Society. All this would indicate that the occupation by the petitioner/Society of the dilapidated building belonging to the Government school was with the prior permission of the Authorities concerned.

(17) The meaning of the expression of unauthorized occupation is defined under the Adhiniyam - it only means an occupation by any person of the public premises without authority for such occupation and it includes the continuance in occupation by any person of the public premises which he was allowed to occupy has expired or has been determined for any reason whatsoever.

(18) Keeping in view what has been stated by me earlier it cannot be said that the occupation of the petitioner/Society is an unauthorized occupation as contemplated under Section 2(g) of the Adhiniyam. That apart for initiation of the proceedings under the Adhiniyam, the Competent Authority has necessarily to issue a notice as envisaged under Section 4 of the Adhiniyam. The said section stipulates that the Competent Authority must form opinion independently that a person is in an unauthorized occupation of the public premises and he should be evicted. Only after forming such opinion he could be issuing a notice under sub-Section 1 of section 4 of the Adhiniyam. Sub-Section 2 of Section 4 of the Adhiniyam mandates that the notice issued shall specify the grounds on which the order of eviction is proposed to be made. Sub-Section 2(b) of Section 4 of the Adhiniyam need not be noticed by me.

(19) Keeping in view the possible construction to be placed of Section 4 of the Adhiniyam, it may be necessary at this stage to extract that the notice issued by the Authority under the Adhiniyam to the petitioner/Society dated 21-08-1998, which reads as under :-

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> "The then Principal of Government Multipurpose Higher Secondary School, Raipur, Shri I.S. Chouhan had given you the premises of the school hostel and professional courses premises on rent in the year 1995 without obtaining permission from the State Government. The Director, Directorate of Public Instructions Madhya Pradesh, vide its letter No.V.S./A/PAVAS/78/78/98/992 dated 22-07-98 has instructed to get the premises vacated.
>
> You are, therefore, informed to vacate the premises by 7th September 1998 and inform this Court."

(20) As already stated that it is the Competent Authority alone who forms an opinion that any person is in an unauthorized occupation of the public premises and then alone he could be initiating the proceedings under the Adhiniyam.

(21) A reading of the show cause notice issued by the respondents/Competent Authority would demonstrate that he was not acting on his own but he was acting on the instructions of the director of Public Instructions of M.P. That apart a show cause notice that is issued should also conform to the requirements of sub-Section 2 of Section 4 of the Adhiniyam which specifically provides that the eviction notice should specify the grounds on which the order of eviction is proposed to be made. A reading of show cause notice issued by the Competent Authority ~~did~~ does not conform to the requirement of Section 4 of the Adhiniyam.

(22) Without appreciating this aspect of the matter, the Competent Authority as well as the Appellate Authority have proceeded to pass an order dated 14-02-1998 and 08-03-2000. Since the notice issued by the Competent Authority is not in conformity with the requirement of Section 4 of the Adhiniyam, the action taken and the orders passed by the respondents/Authorities cannot be sustained. Accordingly the following :-

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ORDER

1. The writ petition is allowed.

2. The impugned orders dated 14-02-1998 and 08-03-2000 passed by the Competent Authority as well as the Appellate Authority respectively are set-aside.

3. Liberty is reserved to the respondents to take up appropriate proceedings against the petitioner/Society if they so desire, in accordance with law.

4. Ordered accordingly.

Sd/-
Chief Justice